THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 569 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PURUSHOTTAMBHAI MULAJIBHAI HADIYAL - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HARNISH V DARJI for Applicant(s) : 1,MR BHAVIN J SATWARA for Applicant(s) : 1,
MR.A.J. DESAI, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 19/09/2006

ORAL JUDGMENT

The applicant-original accused is aggrieved by the judgement and order dated 31st January 2003 passed

by the learned Judicial Magistrate, First Class, Vadhwan City in Criminal Case No.48 of 2000 whereby the learned Judicial Magistrate, First Class, was pleased to convict the petitioner-accused for breach of Rule 32(e) of Prevention of Food Adulteration Act, 1955 (hereinafter referred to as “the said Act”) and under section 7(2) and 7(5) under section 16 of the Act. The learned JMFC was pleased to award 3 months simple imprisonment and fine of Rs.250/-, in default to undergo 15 days of simple imprisonment. The learned JMFC was also pleased to pass a similar order for violation of Rule 32(f).

2. The petitioner-accused being aggrieved by the aforesaid judgement and order preferred criminal Appeal No.1 of 2003, which was heard by the learned Additional Sessions Judge, Fast Track Court No.2, Surendranagar. The same was dismissed by judgement and order dated 3rd August 2006. The learned Additional Sessions Judge was pleased to confirm the judgement and order passed by the learned JMFC and was pleased cancel the bail bonds of the petitioner-accused and ordered him to be taken into

custody. At that time an application was moved for suspending the sentence so as to enable the petitioner-accused to approach this Court by way of a revision application. The learned Additional Sessions Judge was pleased to suspend the sentence till 31st August 2006.

The learned advocate for the petitioner submitted that though the revision application was filed in time, i.e. prior to expiry of the period for which the sentence was suspended, but when the matter was moved for admission hearing before this Court, this Court (Coram: D.N. Patel, J.) was pleased to issue notice and call for the Record & Proceedings by order dated 30.08.2006. The relevant part of the order reads as under:

> “It is needless to say that as this Court is issuing notice to the respondents, the trial court shall not pass any order in any application. .. ..”

The learned advocate for the petitioner vehemently

submitted that this is a case wherein the conviction recorded against the petitioner-accused is required to be quashed and set aside as the requirement of subsection (2) of section 13 of the Act is not fulfilled. The learned advocate submitted that under subsection (2) of section 13 of the Act, 'a copy of the report of the result of analysis is to be served to the person, informing such person or persons that if it is so desired, either or both of them may make an application to the Court within a period of ten days from the date of receipt of the copy of the report, to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory'. The learned advocate emphatically submitted that this particular provision of law is not complied with and that being so, in light of the decisions of this Court and of the Hon'ble the Apex Court the conviction is vitiated and the same is required to be quashed and set aside by this Court.

The learned advocate submitted that this very plea was raised before the learned JMFC, but then the same

is rejected. The learned advocate invited attention of this Court to the contents of paras 13 and 14. He submitted that the learned JMFC has misread the provisions of subsection (2) of section 13 of the Act. He submitted that the distinction drawn by the learned JMFC in two types of cases, namely, (i) in which sample is found to be adulterated and (ii) samples which are found to be misbranded, is uncalled for and unsustainable.

3. The submission of the learned advocate is not acceptable because term 'adulterated' is defined in clause (i-a) of section 2 of the Act, whereas what is 'misbranded' is defined in clause (ix) of section 2 of the Act.

There are numerous ways in which an article can be 'misbranded'. In the present case as is mentioned, the article is found to be not complying with Rules 32(e) and 32(f) of the Rules.

4. Subsection (2) of section 13 is with a purpose. The purpose for which a copy of the report of the

result of the analysis is to be provided is to give an opportunity to the person/s to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory. The re-analysis by Central Food Laboratory will be required only in cases where the sample is found 'adulterated'. It is only when a sample is found 'adulterated' a question of its 'reanalysis' can arise and not in cases where sample is found to be 'misbranded'. In the considered opinion of this Court the learned JMFC is right in saying that there is no breach of subsection (2) of section 13 of the Act committed in this case.

5. In support of this submission the learned advocate for the petitioner relied upon a decision of the Hon'ble the Apex Court in the matter of **Rameshwar Dayal Vs. State of U.P.** reported in 1996 SCC (Cri.) 75. The learned advocate submitted that in this judgement, the Hon'ble the Apex Court has held that, “Non supply of report of the Public Analyst to the accused **causing serious prejudice to him** - conviction not sustainable.” The Hon'ble the

Apex Court has noted that,

> “The sample taken was found to be **adulterated**. On the record it appears that the report of the Public Analyst is not supplied to the accused as required under Section 13(2) of the Act. Consequently, he could not get his own sample examined by the Central Laboratory. It is very valuable right given to him. Rule also provide that such a report should be supplied to the accused within a certain period. .. ..”

In the judgement of the Hon'ble the Apex Court the sample was found to be 'adulterated' and non supply of the report of the analyst was held to be seriously prejudicial to the petitioner-accused and due to non compliance of subsection (2) of section 13 the conviction was held vitiated.

6. In the present case the sample is not found to be 'adulterated'. It is found to be 'misbranded'. Therefore, there is no report of analysis declaring the sample to be 'adulterated' one. That being so there is no question of 'any breach' by which a prejudice is caused to the petitioner by non supply

of the report of the analysis.

7. The learned advocate for the petitioner next relied upon a decision of this Court in the matter of **Vallabhbhai Popatbhai Vs. State of Gujarat**, reported in 2005 (2) GLR 1518. The learned advocate submitted that this Court has held that, “supply of report of Public Analyst is mandatory”.

In view of the discussion hereinabove the question is as to whether in the present case 'report' was at all required to be supplied or not. As discussed hereinabove when the sample is not found to be 'adulterated' and is found to be only 'misbranded'. The answer is in the negative.

In the present case the facts are set out in para 4. The relevant part reads as under:

> “It is the case of the prosecution that the petitioner-accused runs milk business in the name and style of 'Sadguru Dairy farm' in the area known as Junction Plot at

> Rajkot. .. .. .. The sample drawn by respondent no.2 was sent for analysis to the Public Analyst and it is alleged that the fat count was found less than the standard prescribed in the Act. Thus, it was an adulterated food article. It is the say of the respondent no.2 that the petitioner-accused were intimated about the report of the Public Analyst and as there is no requisition to send the sample to the Central Food Laboratory, the complaint came to be filed. .. ..”

8. In the same judgement it is observed that,

> “The third point raised by the petitioner is also able to twist the balance in favour of the petitioner because there is no convincing evidence to show that the report of the Public Analyst was ever sent to the accused. It is true that the concerned authority had sent an R.P.A.D. To the accused, after receipt of the report from the Public Analyst but the evidence led by the prosecution indicates that the accused were intimated only that the article sent

> for analysis is found adulterated as the same was not as per the prescribed standards." (emphasis supplied)

9. In view of these facts compliance of subsection (2) of section 13 of the Act stands on a different footing. In the facts of the present case it cannot be said that on account of the 'non compliance of subsection (2) of section 13 of the Act', the petitioner-accused was at all prejudiced.

10. The learned advocate for the petitioner next submitted that the conviction recorded against the petitioner is also vitiated on the ground that the 'sanction' accorded under section 20 of the Act was, not accorded after application of mind'. The learned advocate submitted that the sanction for prosecution, required under section 20 of the Act is to be accorded only after application of mind and this 'application of mind' should be apparent in the sanctioned letter. In absence of such 'apparent application of mind' the sanction is no sanction in the eye of law and conviction based on such sanction must fail.

In this regard he relied upon a decision of this Court in the matter of Ganpatbhai T. Prajapati Vs. Food Inspector and others, reported in 2005 (3) GLH 389. The learned advocate submitted that the Court has held that,

> "Sanction to prosecute granted by merely stating "Scrutinised all the papers and sanctioned prosecution" - Not enough – Bare words that all the papers were placed before the authority would not be sufficient for holding that the authority had applied mind before granting sanction - Mechanical grant of sanction cannot be said to be a sanction with active application of mind – prosecution cannot sustain."

The learned advocate also relied upon yet another unreported decision dated 15/18th September 2000 in Criminal Revision Application No.110 of 1994 of this Court (Coram: Ms.Justice R.M. Doshit, J.) in the matter of Shankarlal Mangilal Jain Vs. State of Gujarat. The learned advocate relied upon the following observations made by the Hon'ble Court:

> “.. .. The only contentions, which according to me, merit consideration are (1) The consent recorded by the competent authority under section 20(1) of the Act does not disclose application of mind. The consent given without due application of mind would be fatal to the prosecution; .. ..”

11. The learned advocate relied upon further observations which are as under:

> “The consent as envisaged under section 20 of the Act has been recorded beneath the complaint in the following terms:
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> > “Scrutinised all the papers and sanctioned prosecution”.
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> The consent as recorded does not evidence active application of mind. Though no reasons are required to be recorded while granting consent under section 20 of the Act, the prosecution is duty bound to satisfy the court that the consent had been given after perusal of all the relevant papers and after proper application of mind.

> Such application of mind can either be manifest in the consent granted or can be proved by oral evidence. .. ..”

12. The learned advocate submitted that as is held by this Court in the aforesaid two decisions, if the sanction is not with a manifest application of mind, the sanction is no sanction in the eye of law and the prosecution must fail.

13. Mr.A.J. Desai, the learned Additional Public Prosecutor invited attention of the Court to exh.24, it is the 'sanction order'. Mr.Desai requested that let the entire order be read. Permission was granted. The order was read. The contents of the order are set out herein below for the ready reference. The order in the first para sets out the fact that on 30.09.1989 the Food Inspector Shri C.P. Gohil collected the sample.

In the second para the order sets out the fact that the Public Analyst, Vadodara by its Test Report No.Q-4/ 348/ 99 dated 21.10.1989 declared the sample to be 'misbranded', but on study of the Test Report it

was noticed that the said Test Report did not contain information about all necessary tests relating to that sample, which were required to be conducted under the provisions of the Prevention of Food Adulteration Act conducted or not. The authority having felt that the report is defective the Local (Health) Authority under clause (e) of subsection (2) of section 13 of the Act sent second part of the sample to the Public Analyst of the Municipal Corporation of Vadodara on 01.11.1999 for re-analysis.

The order then proceeds to record that the report of the said re-analysis was received in the office on 14.12.1999. The Public Analyst, Municipal Corporation of Vadodara in its Test Report No.PHL/ PFA/ NG/ 24/ 99- 2000 dated 01.12.1999 declared the sample to be “misbranded”. It is also mentioned in the order that on perusal of the Test Report it is noticed that the sample did not bear 'Batch Number', 'month and year of manufacture', 'expiry date' and thus, the provisions of Rule 32(e) and (f) of the Act were violated and the sample was 'misbranded' in terms of

clause (k) of subsection (ix) of section 2 of the Act.

The sanction order then proceeds in the third para to record that on the basis of the documentary evidence produced by the Food Inspector, Shri C.O. Gohil, it is found that the manufacturing firm is a proprietary firm, its owner is Purushottambhai Maluajibhai Hadiyal. The owner of manufacturing firm (unit), as manufacturer 'misbranded' the goods and sold the same to the Food Inspector for analysis. Thus, committed breach of clause (v) of subsection (2) and prima facie has committed offence punishable under section 16 of the said Act. Therefore, in the public interest at large in the discretion of the authority filing of the prosecution is found to be just and proper.

It is thereafter, that the last para of the sanction order records grant of sanction by the authority. The last para reads as under:

> “I, Deepika R. Chauhan, Assistant Commissioner and Local (Health) Authority,

> Surendranagar under Notification of the Health & Family Welfare Department of Government of Gujarat dated 09.06.1998 bearing No.GJ/ 16/ PFA/ 1097 / 3617 (2) JH, having been authorised under section 220 of Prevention of Food Adulteration Act, 1954 grant sanction to the Food Inspector, Shri C.P. Gohil to file case (prosecution) against Shri Purushottambhai Mulajibhai Hadiyal (owner of the manufacturing unit-seller).”

14. A perusal of this 'sanction order' leaves no doubt that the authority has not only applied its mind to the papers produced before him, but took trouble to take note of every minute detail and only thereafter has granted sanction. In the considered opinion of this Court, the application of mind is manifest in the sanction order and therefore, the submission of the learned advocate for the petitioner fails.

15. Having found no substance the Criminal Revision Application is dismissed. Notice is discharged.

(RAVI R. TRIPATHI, J.)

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